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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,918	08/13/2001	Claudia Panzer	H-3630-PCT/U	5279

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COGNIS CORPORATION  
2500 RENAISSANCE BLVD., SUITE 200  
GULPH MILLS, PA 19406

EXAMINER

JIANG, SHAOJIA A

ART UNIT	PAPER NUMBER
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1617

DATE MAILED: 02/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/830,918

Applicant(s)

PANZER ET AL.

Examiner

Shaojia A. Jiang

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other:

### **DETAILED ACTION**

This application is a 371 of PCT/EP99/08105 which claims priority to Germany 198 50 734.8.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wachter et al. (WO 96/16991, PTO-1449 submitted August 13, 2001), Yu et al. (5,547,988, PTO-892), and Keil et al. (5,690,924, PTO-1449 submitted August 13, 2001).

Wachter et al. discloses that a chitosan having an average molecular weight within the instant claim, having a degree of deacetylation within the instant claim, and having a Brookfield viscosity within the instant claim, in an amount 0.3% by weight (within the instant claim) is useful in cosmetic compositions such as skin-care, hair-care, hair-repair, and wound-healing. See US 5,962,663 equiv to WO 96/16991: abstract, col.1, col.2 lines 49-60, and col.4 lines 44-47. Wachter et al. further discloses the compositions therein also comprising carboxylic acids and ethanol in 10-15% (see col.4 line 61 and col. 10 Table 2).

Yu et al. discloses the topical compositions for alleviating signs of dermatological aging – skin, nail and hair changes, comprising 2-hydroxycarboxylic acids such as DL-lactic acid (5 %), chitosan (0.3 g), and ethanol (40%). See abstract and col.10 lines 61-67 in Example 2.

Keil et al. discloses the hair treatment composition comprising a deacetylated (75-90%) chitosan having an average molecular weight within the instant claim, 2-pyrrolidone carboxylic acid, and ethanol (40-50%). See abstract and Example 2, 5 and 9 in col.5-7.

The prior art does not expressly disclose the employment of the particular amount (70-90% by weight) of ethanol in the cosmetic compositions comprising deacetylated chitosan and carboxylic acids for skin-care, hair-care, hair-repair, and wound-healing in Wachter, Yu, and Keil. The prior art does also not expressly disclose the employment of hydroxyisobutyric acid in the cosmetic compositions therein. The prior art does also not expressly disclose the cosmetic compositions further comprising one propellant gas.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to employ the particular amount (70-90% by weight) of ethanol in the cosmetic compositions for skin-care, hair-care, hair-repair, and wound-healing in Wachter, Yu, and Keil, and to employ hydroxyisobutyric acid as a carboxylic acid in the cosmetic compositions therein, and to further add one propellant gas in the cosmetic spraying compositions therein.

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One having ordinary skill in the art at the time the invention was made would have been motivated to employ the particular amount (70-90% by weight) of ethanol in the cosmetic compositions for skin-care, hair-care, hair-repair, and wound-healing in Wachter, Yu, and Keil since ethanol in 10-15% or 40-50% is known to be useful in the cosmetic compositions comprising the active ingredients, deacetylated chitosan and carboxylic acids, for skin-care, hair-care, and hair-repair based on the prior art. Therefore, one of ordinary skill in the art would have been motivated to optimize the amounts of ethanol to 70-90% by weight in the composition because the optimization of amounts of ethanol (a well known solvent in a composition) is considered well within the skill of artisan, involving merely routine skill in the art.

Moreover, hydroxycarboxylic acids such as DL-lactic acid are well known to be useful in cosmetic skin-care compositions. Therefore, one of ordinary skill in the art would have reasonably expected that the particular hydroxycarboxylic acid, hydroxyisobutyric acid (a homolog of lactic acid), would have same usefulness as any other hydroxycarboxylic acids such as lactic acid in cosmetic composition for skin care/hair care. Note that it has been settled that the addition of CH<sub>3</sub> groups to a known compound is not patentable and prima facie obvious. See *In re Wood*, 199 USPQ 137.

Further, one of ordinary skill in the art would have been motivated to add one propellant gas in the cosmetic spraying compositions because one propellant gas is well known in the art to be useful in a spraying composition.

Since all active composition components herein are known to be useful in cosmetic compositions for skin-care and hair-care, it is considered prima facie obvious to

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combine them into a single composition to form a third composition useful for the very same purpose. See *In re Kerkhoven*, 205 USPQ 1069 (CCPA 1980).

Thus the claimed invention as a whole is clearly prima facie obvious over the combined teachings of the prior art.

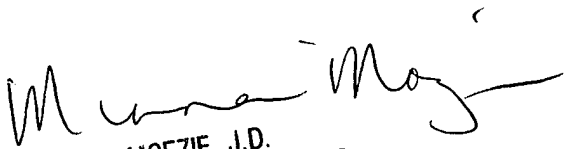
In view of the rejections to the pending claims set forth above, no claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Jiang, whose telephone number is (703) 305-1008. The examiner can normally be reached on Monday-Friday from 9:00 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1235.

Shaojia A. Jiang, Ph.D.  
Patent Examiner, AU 1617  
February 19, 2002

  
MINNA MOEZIE, J.D.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600